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the Elimination
of all Forms of
Racial Discrimination

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COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION

REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 9
OF THE CONVENTION

Fourteenth report of States parties due in 1999

Addendum

Tonga*

[17 March 1999]

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* This document contains the fourteenth report, due on 17 March 1999. For the eleventh, twelfth and thirteenth reports of Tonga, submitted in one document, and the summary records of the meetings at which the Committee considered that report, see documents CERD/C/319/Add.3 and CERD/C/SR.1298.

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Introduction

1. The State party has considered and noted the Committee's concluding observations in its eleventh, twelfth and thirteenth periodic reports (CERD/C/304/Add.63) and, as requested by the Committee, will endeavour in the present report to comment on those observations and to provide further information as requested by the Committee.

I. COMMENTS ON THE CONCLUDING OBSERVATIONS OF THE COMMITTEE

A. Positive aspects

2. The State party endorses the Committee's view that presenting a periodi report regularly is sometimes difficult for Tonga, a country of limited resources. However, the Government is still determined to meet its obligatio to present periodic reports under the Convention.

3. The State party welcomes the Committee's satisfaction with the prohibition of the practice of racial discrimination and the provision for equal rights for all people in Tonga as provided for in the Constitution. There have been no amendments to the Constitution or any legislation that in any way threatens these principles.

4. The State party also reports that non-Tongans continue to enjoy and participate in the general life in Tonga without any significant hindrance or restrictions. Non-Tongans participate in social, cultural and religious organizations and activities throughout Tonga. Moreover, the State party reports that the provisions in the Constitution allowing any individual to lodge complaints about discrimination on racial grounds before the courts still exist, and their existence has not been threatened by any amendments to the Constitution nor by any new legislation. To date there have been no cour cases involving racial discrimination.

B. Principal subjects of concern

5. Comments on the concluding observations of the Committee on the principal subjects of concern are embodied in this part of the report. Each observation will be dealt with separately.

1. "The report does not contain sufficient information that would allow the Committee to assess the level of implementation of the Convention." (para. 6)

6. The State party has provided in this report the information that the Committee has requested, and it is the State party's hope that the Committee will be able to assess better the level of implementation of the Convention i Tonga. However, as stated in the previous report and as repeated in this report, the current legislative, judicial, administrative framework of Tonga provides for the implied implementation of the Convention. The State party thus feels that the lack of express implementation of the Convention does not disadvantage persons of non-Tongan ethnic origin. In other words, the spirit

of the Convention exists within the current legal framework of Tonga. Simply put, the State party does not practise, condone, or encourage the practice of racial discrimination.

2. "Concern is expressed, in particular, at the lack of legislation intended to enforce the provisions contained in article 4 of the Convention and at the statement contained in the report that Tonga has no express policy on the elimination of racial discrimination." (para. 7)

7. The State party accepts that it has not implemented any legislation which specifically enforces article 4 of the Convention. However, the lack of any specific legislation is attributable to the following factors which exists in Tonga:

(a) Tonga's population is very homogeneous, with members of non-Tongan ethnic groups forming around 3.7 per cent of the population throughout Tonga;

(b) Racial discrimination is not heard of in Tonga;

(c) The Constitution of Tonga provides that there shall be one law regardless of various differences, including race. To date, there has been no court case based on racial discrimination;

(d) No organization or propaganda that practices, promotes or incites racial discrimination exists in Tonga.

3. "In view of the ethnic characteristics of the population, the structure of power in the country and the configuration of the Legislative Assembly, it is regretted that the State party has not provided detailed information about the implementation of the provisions of article 5 of the Convention vis-à-vis the different ethnic groups." (para. 8)

8. Under the Constitution and the Laws of Tonga, every person in Tonga, be they Tongan or non-Tongan, is entitled to the following "rights":

(a) The right to equal treatment before all organs administering justice (article 5 (a)). This right is provided for by section 4 of the Constitution (see annex I);

(b) The right to security and protection of the State from violence from any person (article 5 (b)). This right is provided for by section 6 of the Police Act (Cap. 35) of the Laws of Tonga (see annex I);

(c) The right to vote and to stand for elections. Under article 64 of the Constitution only Tongan subjects may vote. This includes persons of non-Tongan ethnic origin who have become naturalized Tongans. This is the common principle throughout other countries;

(d) The civil rights listed in article 5 (d) (i) to (ix):

(i) Right to freedom of movement and residence within the border of the State. There is no express provision guaranteeing freedom of movement; however, every person in Tonga is free to travel anywhere within the Kingdom without any restrictions;

(ii) Right to leave any country. There is no express provision for this right; however, every person is entitled to hold a passport and travel in and out of Tonga. Non-Tongans also enjoy the right to travel freely in and out of Tonga, unless they breach the law, as in every other country;

(iii) Right to nationality. Under article 29 of the Constitution (see annex I) any non-Tongan who has resided in Tonga for five years or more may, with the consent of the King, become a naturalized Tongan;

(iv) Right to marriage and choice of spouse. A non-Tongan may marry a Tongan only if he or she receives the written consent of the Principal Immigration Officer under section 10 (2) (c) of the Immigration Act (Cap. 62) of the Laws of Tonga (see annex I). As reported in earlier reports, this does not breach a persons right to marry or choose his or her spouse;

(v) Right to own property alone as well as in association with others. There is no express provision for this right; however, non-Tongans may own property in Tonga, except for land which they may only lease from Tongans. This is provided for by article 104 of the Constitution (see annex I);

(vi) Right to inherit. Non-Tongans who have become naturalized Tongans have the same rights and privileges as native-born subjects of Tonga, except that they shall not be entitled to the rights of hereditary tax allotments under article 29 of the Constitution;

(vii) Right to freedom of thought, conscience and religion. This is provided for by article 5 of the Constitution (see annex I);

(viii) Right to freedom of opinion and expression. This is provided for by article 7 of the Constitution (see annex I);

(ix) Right to freedom of peaceful assembly and association. There is no express provision; however, every person is free to meet peacefully and to associate themselves with any other person;

(e) The economic, social and cultural rights listed in article 5 (e) (i)-(vi):

(i) Right to work, free choice of employment, just and favourable working conditions, equal pay for equal work. There is no express provision; however, every person is entitled to all these rights, and they are provided for by all employers in Tonga;

(ii) Right to form and join trade unions. This is provided for by section 5 of the Trade Union Act (Cap. 48) of the Laws of Tonga (see annex I);

(iii) Right to housing. There is no express provision for this right; however, there is no homeless person in Tonga. Non-Tongans may rent homes from Tongans, and the real estate business is fast becoming an alternative source of income for Tongans. There is restriction in constructing or renting a house in Tonga;

(iv) Right to public health, medical care, social security and social services. The State provides free health care to the public;

(v) Right to education and training. Every person between the age of 6 and 14 must attend school under section 52 (a) of the Education Act (Cap. 86) of the Laws of Tonga (see annex I). Both Tongan and non-Tongans are free to attend any school of their choice;

(vi) Right to equal participation in cultural activities. There is no express provision on this right; however, article 1 of the Constitution (see annex I) guarantees freedom to all. As stated earlier in this report and in the previous report, non-Tongans freely enjoy participation in not only cultural activities, but also social and economic activities;

(f) The right to access any place or service intended for use of the general public (article 5 (f)). Even though there is no express provision, no person, whether Tongan or non-Tongan, is restricted from access to any place or service intended for the general public.

4. "It is a matter of concern that as the Convention has not been incorporated into the domestic law, it cannot be invoked in the courts." (para. 9)

9. The State party accepts and notes this concern. Since receiving the Committee's concluding observations, no action has been initiated to incorporate the Convention into domestic law. The State party feels that the current legal framework of Tonga, including the Constitution, does provide for and protect the rights protected by the Convention.

C. Suggestions and recommendations

1. "The Committee recommends that the next report provide updated information about the population, in conformity with paragraph 8 of the Committee's general guidelines. The report should also contain detailed information about the practical implementation of the Convention, especially articles 4 and 5." (para. 10)

10. Annex 2 to this report contains a table which provides an update on the population. This information was collected after the last census held in Tonga in 1996. this information is based on the ethnic origin of the population.

2. "The Committee recommends that the State party provide 'a core document' as soon as possible." (para. 11)

11. The State party submits the present report as the "core document" requested. However, the State party would welcome any further request for further or more detailed information in relation to this report.

3. "The Committee recommends that subjects intended to promote tolerance among different ethnic groups be incorporated in school curricula." (para. 12)

12. The State party accepts and takes note of the recommendation. The State party will consider initiating action on the recommendation.

4. "The Committee suggests that, in preparation of its next periodic report, the Government of Tonga may wish to avail itself of the technical assistance provided under the advisory services and technical assistance programme of the Office of the United Nations High Commissioner for Human Rights." (para. 13)

13. The State party accepts and notes the suggestion. The State party reports that it will look into availing itself of this assistance.

5. "The Committee recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the Fourteenth Meeting of States Parties to the Convention." (para. 14)

14. The State party notes the recommendation.

6. "It is noted that the State party has not made the declaration provided for in article 14 of the Convention and some members of the Committee requested that the possibility of such a declaration be considered." (para. 15)

15. The State party accepts that it has not made the declaration under article 14 of the Convention. However, it requests that the Committee give the State party time to consider the possibility of making such a declaration.

7. "The Committee recommends that the State party's periodic report, due on 17 March 1999, address all the points raised in the present observations. It also expresses the hope that a delegation be present when the Committee considers the report." (para. 16)

16. The State party requests that it should not commit itself to sending a delegation. The State party will, however, endeavour to send a delegation, but this will depend on the availability of financial resources.

Annex I

RELEVANT ARTICLES OF THE CONSTITUTION AND LAWS OF TONGA

Article 1 of the Constitution of Tonga

"Since it appears to be the will of God that man should be free as He has made all men of one blood therefore shall the people of Tonga and all who sojourn or may sojourn in this Kingdom be free forever. And all men may use their lives and persons and time to acquire and possess property and to dispose of their labour and the fruit of their hands and to use their own property as they will."

Article 4 of the Constitution of Tonga

"There shall be but one law in Tonga for chiefs and commoners for non-Tongans and Tongans. No laws shall be enacted for one class and not for another class but the law shall be the same for all the people of this land."

Article 5 of the Constitution of Tonga

"All men are free to practise their religion and to worship God as they may deem fit in accordance with the dictates of their own consciences and to assemble for religious service in such places as they may appoint. But it shall not be lawful to use this freedom to commit evil and licentious acts or under the name of worship to do what is contrary to the law and peace of the land."

Article 7 of the Constitution of Tonga (as amended by the Constitution (Amendment) Act 1990)

"It shall be lawful for all people to speak and write and print their opinions and no law shall ever be enacted to restrict this liberty. There shall be freedom of speech and of the press for ever but nothing in this clause shall be held to outweigh the law of defamation or the laws for the protection of the King and the Royal Family."

Article 29 of the Constitution of Tonga

"Any foreigner after he had resided in the Kingdom for the space of five years or more may with the consent of the King take the oath of allegiance and he may be granted Letters of Naturalization and all naturalized subjects shall have the same rights and privileges as native born subjects of Tonga with the exception that they shall not be entitled to the rights of hereditary tax allotments."

Article 64 of the Constitution of Tonga

"Every Tongan subject of twenty-one years of age or more who being a male and not a noble pays taxes and being a male or female can read and write and is not insane or imbecile and is not disabled by the twenty-third clause shall be entitled to vote in an election for

representatives of the people to the Legislative Assembly and on the day appointed for election shall be exempt from summons for debt."

Article 104 of the Constitution of Tonga

"All the land is the property of the King and he may at pleasure grant to the nobles and titular chiefs or matabules one or more estates to become their hereditary estates. It is hereby declared by this Constitution that it shall not be lawful for anyone at any time hereafter whether he be the King or any one of the chiefs or the people of this country to sell any land whatever in the Kingdom of Tonga but they may lease it only in accordance with this Constitution and mortgage it in accordance with the Land Act. And this declaration shall become a cogent binding on the King and chiefs of this Kingdom for themselves and their heirs and successors for ever."

Section 6 of the Police Act (Cap. 36) of the Laws of Tonga

"The Force shall be employed in and throughout the Kingdom for the maintenance of law and order, the preservation of the peace, the protection of life and property, the prevention and detection of crime and the enforcement of all laws and regulations with which it is directly charged, and the serving and execution of such process as they are required by law to serve and execute."

Section 5 of the Trade Union Act (Cap. 48) of the Laws of Tonga

"5. (1) No trade union or any member thereof shall perform any act in furtherance of the purposes for which it has been formed unless such trade union has first been registered.

(2) Any trade union or any officer or member thereof who contravenes the provisions of this section shall be guilty of an offence punishable with a fine not exceeding $50."

Section 10 (2) (c) of the Immigration Act (Cap. 62) of the Laws of Tonga

"10. ...

(2) A visitor's permit shall entitle a visitor to remain in the Kingdom of Tonga for a period not exceeding 6 months and shall be subject to the conditions that the visitor during his stay in the Kingdom -

(a) shall not take up employment in the Kingdom without the permission in writing of the Principal Immigration Officer; and

(b) shall not behave in a manner prejudicial to peace, good order, good government or public morals; and

(c) shall not marry without the consent in writing of the Principal Immigration Officer; and

(d) shall furnish such security in cash or otherwise as may be demanded by the Principal Immigration Officer.

(3) Any person aggrieved by the refusal of the Principal Immigration Officer to issue to him a visitor's permit under the provisions of this appeal by petition in writing to the Prime Minister, whose decision thereon shall be final."

Section 52 (a) of the Education Act (Cap. 86) of the Laws of Tonga

"52. In this part of this Act:

(a) 'compulsory school age' means any age between 6 years and 13 years and accordingly every person shall be deemed to be of compulsory school age if he has attained the age of 6 years and has not attained the age of 14 years;

..."

Annex II

POPULATION OF TONGA BY SEX AND ETHNIC GROUP

Sex/Division	Total	Tongan	Part-Tongan	European	Fijian	Samoan	Indian	Chinese	Japanese	Other Pacific Is	Other Asian	Not elsewhere sp
MALE AND FEMALE												
KINGDOM OF TONGA	97 784	94 288	1 732	676	223	103	75	55	29	256	325	12
Tongatapu	66 979	64 193	1 378	517	194	81	61	51	26	179	269	10
Vava'u	15 715	15 257	242	124	10	13	3	-	1	22	42	1
Ha'apai	8 138	8 029	46	27	15	5	-	2	-	6	7	1
'Eua	4 934	4 809	58	7	4	4	-	2	2	47	1	-
Niuas	2 018	2 000	8	1	-	-	1	-	-	2	6	-
Nuku'alofa	22 400	20 964	574	324	114	37	70	42	21	110	136	8
Greater Nuku'alofa	31 404	29 624	712	408	133	46	81	47	24	134	187	8
MALE												
KINGDOM OF TONGA	49 615	47 797	866	383	122	41	43	34	19	128	176	6
Tongatapu	33 753	32 311	679	295	109	29	40	31	19	86	149	5
Vava'u	8 055	7 810	134	67	3	8	2	-	-	10	21	-
Ha'apai	4 109	4 045	24	16	7	4	-	2	-	5	5	1
'Eua	2 642	2 565	25	4	3	-	-	1	-	26	-	-
Niuas	1 074	1 066	4	1	-	-	1	-	-	1	1	-
Nuku'alofa	11 118	10 349	276	192	59	17	35	27	17	63	79	4
Greater Nuku'alofa	15 712	14 773	342	241	70	19	40	29	19	69	106	4
FEMALE												
KINGDOM OF TONGA	48 169	46 491	866	293	101	62	42	21	10	128	149	6
Tongatapu	33 226	31 882	699	222	85	52	41	20	7	93	120	5
Vava'u	7 660	7 447	108	57	7	5	1	-	1	12	21	1
Ha'apai	4 029	3 984	22	11	8	1	-	-	-	1	2	-
'Eua	2 310	2 244	33	3	1	4	-	1	2	21	1	-
Niuas	944	934	4	-	-	-	-	-	-	1	5	-
Nuku'alofa	11 282	10 615	298	132	55	20	35	15	4	47	57	4
Greater Nuku'alofa	15 692	14 851	370	167	63	27	41	18	5	65	81	4